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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,925	02/05/2007	Hugh Fisher	28125-4	1156
21130 7590 09/02/2010 BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP ATTN: IP DEPARTMENT DOCKET CLERK 200 PUBLIC SQUARE SUITE 2300 CLEVELAND, OH 44114-2378				
EXAMINER				
GITLIN, MATTHEW J				
ART UNIT		PAPER NUMBER		
3635				
NOTIFICATION DATE		DELIVERY MODE		
09/02/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@beneschlaw.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/566,925

Applicant(s)

FISHER, HUGH

Examiner

Matthew J. Gitlin

Art Unit

3635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Robert J Canfield/
for R. Chilcot, SPE of Art Unit 3635

/M. J. G./
Examiner, Art Unit 3635

Continuation of 11, does NOT place the application in condition for allowance because: Applicant contended that if the Crowder reference was modified to be "formed from sheet metal" then it would "prevent the blocks from being readily disengageable, which is the entire purpose of the invention of Crowder." The Examiners note that Crowder discloses wherein the blocks are formed from "blanks of sheet material, such as cardboard, and the like" (Column 1, Lines 20-25) and wherein the sheet like material is formed from a "suitable gauge" (Column 3, Lines 1-15). One skilled in the art would be able to manufacture the blanks out of any suitable gauge of metal material which would be display flexibility enough to be able to be restored to a "flat, unfolded position". Also, as previously stated, forming the blanks out of sheet metal would not make the blocks "a lot more difficult to disassemble" as contended by the Applicant. A suitable gauge of metal would be lightweight enough to be able to be assembled as desired. Lastly, Applicant contended that manufacturing the blanks of Crowder out of metal would lack motivation because metal blanks would create sharp edges which would be "a safety hazard for small children's building blocks." Again, a suitable gauge of metal could be used to create the blanks. Very thin gauges of metal would not be hazardous to small children and therefore would not lack motivation to modify. Lastly, the Examiners agreed that the arguments directed towards the applicant's invention are not drawn to claimed subject matter, but more to the idea of Applicant's invention. The examiners were merely using Crowder's idea of forming a block from a blank to exhibit a structural reference. The idea that it would not be beneficial to modify Crowder simply because he discloses a children's toy, does not preclude that fact that one with ordinary skill in the art could use the structure of Figure 1 of Crowder for any purpose desired, for example; to protect occupants or store materials. In these instances, a sheet metal material would be desired.